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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, December 17, 2002

APPLICATION OF

CASE NO. PUE-2002-00522

EAST COAST TRANSPORT, INC.,  
TENASKA VIRGINIA PARTNERS, L.P.,  
TENASKA VIRGINIA II PARTNERS, L.P.,  
TENASKA, INC.,  
and  
TENASKA OPERATIONS, INC.

For authority to enter into transactions under  
Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On October 7, 2002, East Coast Transport, Inc. (“ECTI”), Tenaska Virginia Partners, L.P. (“TVP”), Tenaska Virginia II Partners, L.P. (“TV2P”), Tenaska, Inc. (“TI”), and Tenaska Operations, Inc. (“TO”) (collectively referred to as the “Applicants”), filed an application with the State Corporation Commission (“Commission”) pursuant to Chapter 4 of Title 56 of the Code of Virginia (the “Code”). The Applicants request authority to amend the ECTI and TVP water service agreement (“Water Service Agreement”) to reflect a change in service date and contract terminology; for ECTI and TV2P to enter into an easement agreement (“Easement Agreement”); to amend the ECTI and TO operation & maintenance agreement (“O&M Agreement”); and for ECTI and TI to enter into a service

agreement (“Service Agreement”) wherein TI will provide certain development and other centralized services to ECTI.

ECTI, a wholly owned subsidiary of Tenaska Energy, Inc. (“TEI”), is a Virginia public service corporation incorporated on January 16, 2001. ECTI filed its initial rates and regulations for water sales and transportation service with the Commission on July 16, 2001, pursuant to § 56-236 of the Code. ECTI’s rates and regulations were last filed and amended May 2, 2002. ECTI constructs, owns, and operates water facilities that provide untreated, non-potable water to customers in Fluvanna and Buckingham counties.

TVP is a limited partnership that holds a certificate of public convenience and necessity (“CPCN”) to construct and operate a 900-megawatt (“MW”) natural gas-fired electrical generating facility in Fluvanna County, Virginia.

TV2P is a limited partnership that plans to construct and operate a 900 MW natural gas-fired electrical generating facility in Buckingham County, Virginia. TV2P is awaiting Commission approval of its request for a CPCN in Case No. PUE-2001-00429.

TO is a Delaware corporation that provides management, administrative, operational, maintenance, and other support services to Tenaska affiliates. TO provides services to ECTI under an O&M Agreement approved by the Commission in Case No. PUE-2002-00303.

TI is a development company that provides development and other centralized services to Tenaska affiliates engaged in electric generating projects and related activities.

### Amendments to Water Service Agreement

The Applicants are seeking authority to make two amendments to the ECTI-TVP Water Service Agreement wherein ECTI will pump and transport untreated water from the James River to TVP's Fluvanna County generating station to cool its 900 MW generating unit. The first amendment is a three-month delay in the initial service date and extends such date from July 1, 2003, to October 1, 2003. The Applicants represent that their updated construction schedule now shows that initial service will not be required until October 1, 2003, to support the June 2004 commercial operation date.

The second amendment replaces the term "Service Connection Charge" with the term "Facility Construction Charge." The Applicants represent that the terminology change is intended to eliminate any question that customer payments to extend ECTI's water lines to their premises are a contribution to ECTI's capital rather than a charge for service.

### Easement Agreement

The Applicants are seeking approval of an ECTI-TV2P Easement Agreement that is intended to facilitate the construction and operation of ECTI's water pumping station at TV2P's Buckingham County generating station site. This Easement Agreement grants easements for additional access, utility service, and a temporary construction area for the subleased property.

The easements for access and utility service are coextensive with the term of the sublease, which is terminable at any time by ECTI. The term of the temporary construction easement begins on the date of the proposed Easement Agreement and

terminates upon completion of construction of ECTI's facilities. The consideration for the granting of the easements is nominal (\$10), paid in hand by ECTI to TV2P.

The Applicants represent that the Easement Agreement approval was not sought coincident with the Sublease Agreement approval because the survey and construction planning work necessary for a definitive Easement Agreement was not completed until September 2002.

#### Amendments to Operations and Maintenance Agreement

ECTI and TO are seeking authority to make two amendments to their O&M Agreement wherein TO supplies ECTI with management, administrative, operation, maintenance, and other support services prior to and during construction and upon full commercial operation of ECTI's water pumping facility. ECTI and TO are seeking to broaden the § 9.1 (indemnification) and § 10.2 (liability insurance) coverage provided by TO in the O&M Agreement in order to protect more fully ECTI and its business clients from losses occasioned by work performed by TO. During ECTI's negotiations with Dominion Virginia Power ("DVP") for water line easements within DVP's pre-existing electric transmission line easements, DVP required TO to indemnify directly DVP and to acquire specific types and amounts of insurance to cover that indemnification obligation.

The Applicants represent that neither the increased indemnification nor the broadened liability insurance coverage will cause TO's charges to ECTI under the O&M Agreement to change because TO already carries the type and amount of liability coverage sufficient to meet the requirements of the amended O&M Agreement.

#### Service Agreement

ECTI is seeking approval of a Service Agreement with TI whereby TI will provide certain development and other centralized services to ECTI. According to § 2.2 of the Service Agreement, TI will provide:

- (1) Services devoted to developing, establishing and maintaining ECTI as a Virginia public service corporation and a water utility, including[,] but not limited to[,] activities related to corporate formation and maintenance, regulatory filings and approvals before the Virginia State Corporation Commission, the procurement of environmental permits and other certificates or approvals necessary or convenient for ECTI to function as a Virginia public service corporation and a water utility, and the engineering, consulting, contracting, and customer development activities that lead to the execution of a water service contract with a customer;
- (2) Services devoted to billing, accounting, tax, insurance, legal, benefits, human relations activities and other support services that are capable of being provided economically and efficiently on a centralized-service basis; and
- (3) Services devoted to specific projects to serve specific customers, including[,] but not limited to[,] engineering, consulting, and legal services related to the specific facilities to serve that customer.

The Service Agreement, which originated January 16, 2001, has a term of 24 years and continues year-to-year thereafter unless terminated by 12 months' written notice. ECTI can also terminate the agreement upon 60 days' notice should ECTI determine that the arrangement is no longer cost beneficial.

The Applicants state that ECTI will receive services from TI at actual cost, based on hourly rates that reflect either (1) the equivalent of what would be TI's most efficient actual internal cost to provide the services, or (2) the actual cost of service from external, nonaffiliated persons or entities. TI does not build a profit component into the charges. The Applicants represent that all costs under the Service Agreement will be direct charges because they will reflect an activity, measured in hours and billed at an hourly rate, devoted solely to an ECTI matter.

The Applicants represent that there are no common services, no common employees, and no duplication of billing for services between the proposed ECTI/TI Service Agreement and the Commission-approved ECTI/TO O&M Agreement.

The Applicants represent that the Service Agreement serves the public interest because (1) ECTI is able to obtain certain specialized services required to operate its regulated water system; (2) ECTI avoids the business/financial risk of embedding within its own organization the human, technical, and physical plant infrastructure necessary to perform the services; and (3) ECTI shares in the economies of scale generated by TI's centralized service business.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described transactions are in the public interest and should be approved, subject to certain conditions. Regarding the ECTI-TI Service Agreement, we believe that ECTI should ascertain whether a market exists for the services to be obtained from TI. If a market exists, ECTI should pay TI the lower of cost or market for services obtained under the ECTI-TI Service Agreement.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to amend its Water Services Agreement with Tenaska Virginia Partners, L.P., under the terms and conditions and for the purposes as described herein.
- 2) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to enter into an Easement Agreement with Tenaska Virginia II

Partners, L.P., under the terms and conditions and for the purposes described herein.

- 3) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to amend its O&M Agreement with Tenaska Operations, Inc., under the terms and conditions and for the purposes as described herein.
- 4) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to enter into a Service Agreement with Tenaska, Inc., under the terms and conditions and for the purposes as described herein, provided that for services for which a market exists, ECTI shall pay to TI the lower of cost or market.
- 5) Commission approval shall be required for any changes in terms and conditions of the affiliate agreements from those contained herein, including any successors or assigns under the affiliate agreements.
- 6) The approvals granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.
- 7) The approval granted herein shall have no ratemaking implications should there be any future rate proceedings.
- 8) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein whether or not such affiliate is regulated by this Commission.
- 9) East Coast Transport, Inc., shall include agreements approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting, on or before May 1 of each year, beginning May 1, 2003, subject to extension by the Director of Public Utility Accounting.

10) There appearing nothing further to be done in this matter, it hereby is dismissed.